92-66 (2)

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1992

CARPENTERS PENSION TRUST FUND
FOR NORTHERN CALIFORNIA,

Petitioner,

v.

CMSH COMPANY, INC. AND CMSH FRAMING,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Can an employer, whose collective bargaining agreement expired before the effective date of MPPAA, with no ERISA obligation to contribute to a pension plan after MPPAA's effective date, be assessed withdrawal liability?

2. Can the Courts import the "single employer" test used under Secs. 8(a)1 and 8(a)5 of the National Labor Relations Act to assess withdrawal liability on two separate corporations under ERISA, 29 U.S.C. Sec. 1381(a)?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

BRIEF IN OPPOSITION 1

STATUTES INVOLVED 1

STATEMENT OF THE CASE 1

REASONS FOR DENYING WRIT 4

SUMMARY 4

1. Neither Of The Respondents Had An ERISA Obligation After June 15, 1980 And, Therefore, Liability Cannot Be Assessed Under Any Circumstances 5

2. Even If CMSH Framing Had Not Withdrawn Prior To The Effective Date Of MPPAA, Its Obligation Cannot Be Transferred To CMSH Company, Inc 6

3. The Alter Ego Doctrine As Correctly Applied Under The National Labor Relations Act Requires Showing Of An Attempt To Avoid The Collective Bargaining Obligations 9

4. The Ninth Circuit Decision Supports Congressional Intent Of Limited Corporate Liability 12

CONCLUSION 14

TABLE OF AUTHORITIES

Page

CASES

Alkire v. NLRB, 716 F.2d 1014 (4th Cir. 1983) 10

Audit Service v. Rolfson, 641 F.2d 757, 764 (9th Cir. 1981) 3

Carpenters Local Union No. 1478 v. Stevens, 743 F.2d 1271 (1984) at 1276 9

Carpenters Local U. No. 1846 v. Pratt-Farnsworth, 690 F.2d 489 (5th Cir. 1982) 12

Combs v. Sunup Coal Co., 634 F.Supp 13, 18-19 (D.D.C. 1985) 8

Connors v. BMC Coal Co., 634 F.2d 74, 76-77 (D.D.C. 1986) 8

Connors v. P&M Coal Co., 801 F.2d 1370-73 (D.C. Cir. 1986) 8

A. Dariano & Sons v. District Council No. 33, 869 F.2d 514 (9th Cir. 1989) 11, 12

DeBrecini v. Graf Bros. Leasing, Inc., 828 F.2d 877, 880 (1st Cir. 1987) 7, 8

John Deklewa & Sons, 282 N.L.R.B. No. 1375 (1987), *aff'd.* 843 F.2d 770 (3rd Cir. 1988) 12

Goodman Piping Products Inc. v. NLRB, 741 F.2d 10 (2d Cir. 1984) 11

Haley & Haley v. NLRB, 880 F.2d 1147 (9th Cir. 1989) 12

Iowa Express Distribution, Inc. v. NLRB, 739 F.2d 1305 (8th Cir. 1984), cert. denied, 469 U.S. 1088, 105 S.Ct. 595, 83 L.Ed.2d 704 (1984) 10

TABLE OF AUTHORITIES – Continued

Page

Laborers Health and Welfare Trust Fund v. Advanced Lightweight Concrete Co., 44 U.S. 539, 545-551 (1988) 6

Mason Tenders District Council Welfare Fund v. Dalton, 648 F.Supp. 1309 (S.D.N.Y. 1985) at 316-317 8

Mesa Verde Construction v. Northern California District Council of Laborers, 861 F.2d 1124 (9th Cir. 1988) 12

NLRB v. Allcoast Transfer, Inc., 780 F.2d 576 (6th Cir. 1986) 10

NLRB v. Fullerton Transfer & Storage Ltd., 910 F.2d 331 (6th Cir. 1990) 12

NLRB v. O'Neil, ___ 2d ___, Nos. 90-70643, 90-70645, June 5, 1992 12

NLRB v. Scott Printing Corp., 612 F.2d 783 (3rd Cir. 1979) 10

Operating Engineers Pension Trust v. Reed, 726 F.2d 513, 515 (9th Cir. 1983) 8

Penntech Papers, Inc. v. NLRB, 706 F.2d 18 (1st Cir. 1983), cert. denied, 464 U.S. 892, 104 S.Ct. 327, 78 L.Ed.2d 228 (1983) 10

Solomon v. Klein, 770 F.2d 352 (3d Cir. 1985) 8

J.M. Tanaka Construction v. NLRB, 675 F.2d 1029, 1033-35 (9th Cir. 1982) 3, 11

Todd v. McNeff, 667 F.2d 1292 (9th Cir. 1982) 12

United States v. Vogel Fertilizer Company, 455 U.S. 16 (1982) 3

TABLE OF AUTHORITIES – Continued

Page

FEDERAL STATUTES

26 U.S.C. § 414(c) 3

26 U.S.C. § 1563(a) 3

29 U.S.C. § 1301(b) 3

29 U.S.C. § 1381(a) 5

29 U.S.C. § 1383 6

National Labor Relations Act §§ 8(a)(1) and 8(a)(5) . . .7, 9

BRIEF IN OPPOSITION

CMSH Company, Inc. and CMSH Framing submit this Brief in Opposition to the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit that was filed on June 18, 1992 by Carpenters Pension Trust Fund for Northern California.

STATUTES INVOLVED

Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, *et seq.*

STATEMENT OF THE CASE

In most respects, the statement of the case presented by Petitioners is correct. However, it should be noted that the case was presented to the arbitrator on an Agreed Statement of Facts along with two hours of undisputed testimony of William Crouse. Consequently, the arbitrator did not make a determination as to the underlying facts. The Agreed Statement of Facts is Appendix A of this opposition.

The following Agreed Statements (AS) are of some import.

1) (AS) 18: Michael Stiles was responsible for the day to day management of CMSH Framing. Michael had been the foreman at CMSH and then became the responsible officer of CMSH Framing.

2) (AS) 11: In mid 1978, CMSH ceased performing operations covered by the terms of the collective bargaining agreement and instead subcontracted all such work out to CMSH Framing.

3) (AS) 14: On March 28, 1980, CMSH Company, Inc. and CMSH Framing advised the Carpenters that they were terminating the collective bargaining agreement on its expiration date of June 15, 1980.

4) (AS) 4: At all times relevant, William Crouse was the Vice President of CMSH Framing.

In addition, testimony in the arbitration transcript (AT) went undisputed and found:

1) (AT:45). "It was Mike Stiles' duty to understand the terms of the collective bargaining agreement. Mike Stiles went into business as Stiles Construction after the framing company went broke. (AT:38). Well again, Mr. Stiles handled all of the hiring of everybody – carpenters, laborers. It was Mike Stiles duty to understand the terms of the collective bargaining agreement."

In addition, excerpts from case 883733, litigation between the Carpenters Pension Trust Fund for Northern California and CMSH Framing and CMSH in San Francisco Superior Court included a letter from CMSH Company, Inc. to the Carpenters stating "This is to notify you that CMSH Company, Inc. has now separated into separate affiliate corporations. These corporations are CMSH Framing, CMSH Electrical, CMSH Heating and CMSH Inc." The letter was sent prior to the expiration of the collective bargaining agreement.

The arbitrator, Gerald McKay, ignored and found contrary to several of the Agreed Statement of Facts. In addition, he ignored statutory limitations and applicable decisional law. Likewise, the District Court, the Hon. J. P. Vukasin presiding, in a one page decision affirmed the decision of the arbitrator without reference to statutory and decisional parameters.

The Ninth Circuit, however, correctly applied 29 U.S.C. § 1301(b) which requires that two businesses can be treated as one for MPPAA withdrawal liability purposes only if they are under common control. Common control is clearly defined in 26 U.S.C. § 414(c) and 26 U.S.C. § 1563(a). The Petitioner at last agrees that Respondents were not businesses under common control. See *United States v. Vogel Fertilizer Company*, 455 U.S. 16 (1982).

The Ninth Circuit concluded that application by the arbitrator and the District Court of *J.M. Tanaka Construction v. NLRB*, 675 F.2d 1029, 1033-35 (9th Cir. 1982) to assess MPPAA withdrawal liability was error. The Ninth Circuit referred, rather, to *Audit Service v. Rolfson*, 641 F.2d 757, 764 (9th Cir. 1981) to determine whether an alter ego doctrine was applicable in the instant case under the statutory strictures of *ERISA*. Simply stated, the liability Petitioner seeks to attach to Respondent CMSH Company, Inc. is a statutory liability and, therefore, this Court must look to the statute and decisions under that statute. In doing so, it is clear that the Ninth Circuit did not err.

REASONS FOR DENYING WRIT

SUMMARY

1. Neither of Respondent corporations had an ERISA obligation to contribute to Petitioner Fund after June 10, 1980, the expiration of the collective bargaining agreement. As such, withdrawal occurred prior to the effective date of MPPAA and there can be no liability for the withdrawal.

2. Two corporations can only be treated as one entity under MPPAA if they are controlled corporations (clearly not the case in the instant situation) or if one corporation is established as a sham in order to avoid the collective bargaining obligation. Again, the Petitioner admits that this was not the case.

3. Even under the National Labor Relations Act the "alter-ego" doctrine requires an attempt to avoid the obligation under the collective bargaining agreement and binds the *successor* corporation to the terms of the collective bargaining agreement *during the life of the agreement*. The "single employer" doctrine used to determine "employer" under the NLRA does not require an intent to avoid the agreement. It however, is clearly inapplicable in determining *MPPAA* withdrawal liability.

4. Superior Court Case No. 93333 between Petitioner and Respondents, dismissed with prejudice and involving the collective bargaining agreement applicable to the instant case, is *res judicata* on any and all claims of Petitioner herein.

1. Neither Of The Respondents Had An ERISA Obligation After June 15, 1980 And, Therefore, Liability Cannot Be Assessed Under Any Circumstances.

Petitioner argues that the import of MPPAA withdrawal liability cannot be overstated. Relying on the Supreme Court's decision upholding the constitutionality of the retroactive application of MPPAA to a construction industry employer in *R.A. Gray and Co.* it, at the outset, misleads this Court. Immediately after that decision, Congress amended MPPAA and eliminated retroactive application of the Act. 29 U.S.C. 1381(a) provides:

> "Any withdrawal liability incurred by an employer pursuant to Part I of Subtitle E of Title IV of the Employee Retirement Income Security Act of 1974 as a result of the complete or partial withdrawal of such employer from a multiemployer plan before September 26, 1980 shall be void."

Furthermore, (c) provides that:

> "The amendments made by this section . . . shall not be construed to increase the liability incurred by any employer pursuant to Part I of Subtitle E of Title IV of the Employee Retirement Income Security Act . . . as in effect immediately before the amendments made by subsection (b) . . . as a result of the complete or partial withdrawal of such employer from a multiemployer plan prior to September 26, 1980."

Clearly, Congress has spoken. (AS) 13 provided that CMSH Company, Inc. *ceased covered operations in 1978.*

Withdrawal clearly occurs when an employer "permanently ceases all covered operations under the Plan." 29 U.S.C. § 1383.

In addition, as the Circuit Court found, withdrawal also occurs when an employer "permanently ceases to have an obligation to contribute under the plan." Since the only applicable collective bargaining agreement expired on June 15, 1980, 3 months before the effective date of MPPAA, neither CMSH Inc. nor Framing was bound by any collective bargaining agreement or had any obligation to make pension payments after MPPAA became effective. Any obligations incurred after that point were incurred by Framing alone. Framing did not have any pension payment obligations under ERISA because it made payments until negotiations for a new agreement reached impasse. No ERISA obligation for pension payments exists after the expiration of an agreement. See *Laborers Health and Welfare Trust Fund v. Advanced Lightweight Concrete Co.*, 44 U.S. 539, 545-551 (1988).

2. Even If CMSH Framing Had Not Withdrawn Prior To The Effective Date Of MPPAA, Its Obligation Cannot Be Transferred To CMSH Company, Inc.

Petitioner Fund urges this Court to grant the Petition for Writ of Certiorari on the grounds that the Circuits are split on an issue that would affect the outcome of this case. Nothing could be further from the truth. "Centralized control of labor relations, common management and relation of operations, and common ownership and financial control" are all elements used to determine a "single

employer" under the *National Labor Relations Act* [Secs. 8(a)(1) and 8(a)(5)] or the "economic reality" of two employers being one under the *Fair Labor Standards Act*. Circuit Courts that have addressed the common law alter-ego concept as applicable under MPPAA, the issue in *this* case, have been in accord.

They have concluded that MPPAA does not, on its face, indicate any intention to treat corporate debts for withdrawal liability any differently than any other corporate debt. Furthermore, the purposes of MPPAA, as described in the legislative history of the Act, would not be served by an extension of personal liability for corporate withdrawal payments. The Act represents a balance between efforts to protect existing pension plan beneficiaries through a short term strategy of imposing burdens on current employer contributors and through a long term strategy of encouraging new employers to contribute to multi-employer pension funds. *DeBrecini v. Graf Bros. Leasing, Inc*, 828 F.2d 877, 880 (1st Cir. 1987); See also H.R. 96-869, 96th Cong., 2d Sess., *reprinted in* 1980 U.S. Code Cong. & Admin. News at 2918, 2919-220, 2935.

Imposing personal liability of withdrawal payments would hurt that long term strategy by discouraging controlling individuals from directing their corporations to participate in multi-employer pension funds. *DeBrecini* at 880. Petitioner is asking this Court to expand clearly delineated MPPAA employer liability by piercing the corporate veil [with no showing of fraud or intent to avoid the collective bargaining agreement] and reaching shareholder assets in a *second* corporation. If this rule is adopted corporations with overlapping directorates that are not part of a commonly controlled group [as defined

in MPPAA and the IRC] would be "discouraged from directing (related) corporations to participate in multi-employer pension plans.".

As stated in *DeBrecini, supra,* at 879, withdrawal liability under MPPAA is quite different than payroll tax obligations under the Social Security Act and minimum wage payments due under the Fair Labor Standards Act, two corporate debts for which controlling shareholders and officers can be held liable. To find alter-ego under MPPAA and pierce the corporate veil, all Circuits agree that Petitioner Fund would have to prove

> "the small respect paid by the shareholders themselves to separate corporate entities; the fraudulent intent of the incorporators; and the degree of injustice that would be visited on the litigants by recognizing the corporate identity."

This has not been alleged, let alone proven. The "economic reality" test applied in cases decided under the FLSA was also soundly rejected for MPPAA purposes in *Connors v. P&M Coal Co.*, 801 F.2d 1370-73 (D.C. Cir. 1986) at 1377, 1378. See also *Operating Engineers Pension Trust v. Reed*, 726 F.2d 513, 515 (9th Cir. 1983); *Combs v. Sunup Coal Co.*, 634 F.Supp 13, 18-19 (D.D.C. 1985); *Connors v. B.M.C. Coal Co.*, 634 F.2d 74, 76-77 (D.D.C. 1986); *Mason Tenders District Council Welfare Fund v. Dalton*, 648 F.Supp 1309 (S.D.N.Y. 1985) at 316-317; *Solomon v. Klein*, 770 F.2d 352 (3d Cir. 1985).

All the Circuits that have ruled on this issue have concluded that the corporate veil cannot be pierced even to a 100% controlling shareholder under MPPAA unless fraudulent intent to avoid the corporate obligation has

been alleged and proven. Petitioners instead hope to saddle liability on CMSH Company, Inc. merely on a common/centralized control theory, already found universally impermissible by the Courts.

3. The Alter Ego Doctrine As Correctly Applied Under The National Labor Relations Act Requires Showing Of An Attempt To Avoid The Collective Bargaining Obligations.

It is clear from the above referenced cases and the Courts' refusal to impose an FLSA interpretation on an ERISA matrix that National Labor Relations Act interpretations are equally inapplicable. However, even if the NLRA alter-ego doctrine was grafted onto ERISA, its requirements have not been met in the instant case. Rather, it is the "single employer" doctrine [analyzing and applying Secs. 8(a)(1) and (b)(5) of the NLRA] that the Petitioner addresses and which the Circuit Courts have interpreted with some degree of difference.

As stated in *Carpenters Local Union No. 1478 v. Stevens*, 743 F.2d 1271 (1984) at 1276:

> "Under the single employer doctrine, two companies may be bound by a union contract signed by one of them if they are a single employer and the employees of each constitute a single bargaining unit. (Citations omitted). The following factors are considered in determining whether two or more business entities are a single employer: (1) interrelationship of operations, (2) management, (3) centralized control of labor relations, and (4) ownership . . . No factor is controlling and all need not be present. Similar

> factors are considered in applying the alter-ego doctrine. The single employer and alter-ego doctrine function differently, however. To impose a labor agreement on a non-signatory company under the single employer doctrine, the employees of both companies must be shown to constitute a single bargaining unit. Such a showing is not required under the alter-ego doctrine. It focuses on whether there is *an attempt to avoid the obligations of the collective bargaining agreement through a sham transaction* or a technical change in operation." (Citations omitted), (emphasis added).

The following cases recognize the distinction between the single employer and alter-ego doctrines: *Penntech Papers, Inc. v. NLRB*, 706 F.2d 18 (1st Cir. 1983), cert. denied, 464 U.S. 892, 104 S.Ct. 327, 78 L.Ed.2d 228 (1983); *Iowa Express Distribution, Inc. v. NLRB*, 739 F.2d 1305 (8th Cir. 1984), cert. denied, 469 U.S. 1088, 105 S.Ct. 595, 83 L.Ed.2d 704 (1984); *Alkire v. NLRB*, 716 F.2d 1014 (4th Cir. 1983); *NLRB v. Scott Printing Corp.*, 612 F.2d 783 (3rd Cir. 1979).

In *NLRB v. Allcoast Transfer, Inc.*, 780 F.2d 576 (6th Cir. 1986) the Court, though concluding that employer intent is not essential nor a prerequisite of alter-ego status, it was one of the relevant factors which the *NLRB* could consider. That Court noted that the essential inquiry under an alter-ego analysis is "whether there was a bona fide discontinuance and a true change of ownership or merely a disguised continuance of the old employer." At 581. Again, this case analyzed obligations under the National Labor Relations Act, decided by the National Labor Relations Board, and not expansion of MPPAA

liability under ERISA. Even so, "disguised continuance" is merely a subjective analysis of intent as opposed to objective indicia establishing mens rea. Courts that have not analyzed the single employer doctrine against the alter-ego doctrine have tended to blur the differences between the two or implicitly applied one where the other should have been applied. See *Goodman Piping Products Inc. v. NLRB*, 741 F.2d 10 (2d Cir. 1984); *J. M. Tanaka Construction v. NLRB*, 675 F.2d 1029 (9th Cir. 1982).

Petitioner wrongly infers that intent to avoid the collective bargaining agreement was found unnecessary in *A. Dariano & Sons v. District Council No. 33*, 869 F.2d 514 (9th Cir. 1989). The *Dariano* Court stated:

> "The focus of an alter-ego test, unlike the single employer test is on the existence of a disguised continuance of the same business or an attempt to avoid the obligations of the collective bargaining agreement through a sham transaction or a technical change of operations."

Only if the transfer is designed to avoid the NLRA obligation by setting-up what appears to be a new company, a disguised continuance of the old one, will the Court find the successor company an alter-ego of the old company and bound to its predecessor's collective bargaining agreement. Even applying the NLRA "alter ego" test in the instant case the Petitioner comes up short-handed. The doctrine would bind *Framing* to the CMSH agreement during the *life of the agreement*. Since it expired on June 15, 1980, neither the original signatory [CMSH] or its successor [CMSH Framing] had any obligation past that date. In fact, since the agreement was an 8(f) pre-hire agreement there was not even an obligation to bargain.

Todd v. McNeff, 667 F.2d 1292 (9th Cir. 1982); *John Deklewa & Sons*, 282 N.L.R.B. No. 1375 (1987), *aff'd.* 843 F.2d 770 (3rd Cir. 1988); *Mesa Verde Construction v. Northern California District Council of Laborers*, 861 F.2d 1124 (9th Cir. 1988).

Aside from the fact that an NLRA analysis may not be blithely superimposed on MPPAA, it is clear that CMSH Framing, established over two years before the effective date of MPPAA, having paid all contributions required under the collective bargaining agreement, having notified the Union and the Petitioner [by correspondence and by virtue of paying benefits on CMSH Framing checks] of its existence, Framing was not a disguised continuance created in an attempt to avoid the obligations of the collective bargaining agreement through a sham transaction or change in operations.

Therefore, either on the facts or the law, *Dariano* does not support the position of Petitioners. The same is true of other cases cited. See *Haley & Haley v. NLRB*, 880 F.2d 1147 (9th Cir. 1989); *NLRB v. O'Neil*, ___ 2d ___, Nos. 90-70643, 90-70645, June 5, 1992; *Carpenters Local U. No. 1846 v. Pratt-Farnsworth*, 690 F.2d 489 (5th Cir. 1982); *NLRB v. Fullerton Transfer & Storage Ltd.*, 910 F.2d 331 (6th Cir. 1990).

4. The Ninth Circuit Decision Supports The Congressional Intent of Limiting Corporate Liability To The Corporation Involved.

The Petitioner's argument that the purposes of MPPAA will be obliterated if the Ninth Circuit's decision is allowed to stand is without merit.

As much as MPPAA is designed to protect beneficiaries of pension funds by imposing a liability on employers it is also designed to encourage participation by employers in the plan. Expansive liability on corporate shareholders or related corporations that do not meet the definition of commonly controlled corporations deters participation in the plans, contrary to legislative intent and the purposes of the Act.

Furthermore, Petitioners assumed scenario that CMSH's "liability" will be transferred to remaining employers and contributions will have to be increased encouraging other withdrawals leading to another increase in costs and, eventually, to a downward spiral of the vitality of the plan is without merit.

If scenarios are to be indulged, one in which the trustees of the plan a) do not increase benefits until the unfunded vested liability has been eradicated and b) adopt a realistic actuarial interest assumption *commensurate with the actual interest earned by the Plan* thereby reducing artificial unfunded vested liability, more closely approximates reality and results in greater plan participation by employers. Simply stated, Petitioner holds the key to lock in the Fund's financial stability. Expanding withdrawal liability beyond the confines Congress clearly intended is certainly not the answer to its alleged concerns.

CONCLUSION

For the reasons noted above, the petition for the Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDICES

§ 1381. Withdrawal liability established; criteria and definitions

"(a) In general –

"(1) Liability. – Any withdrawal liability incurred by an employer pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq. [section 1381 et seq. of this title]) as a result of the complete or partial withdrawal of such employer from a multiemployer plan before September 26, 1980, shall be void.

"(2) Refunds. – Any amounts paid by an employer to a plan sponsor as a result of such withdrawal liability shall be refunded by the plan sponsor to the employer with interest (in accordance with section 401(a)(2) [section 401(a)(2) of Title 26, Internal Revenue Code of 1954]), less a reasonable amount for administrative expenses incurred by the plan sponsor (other than legal expenses incurred with respect to the plan) in calculating, assessing, and refunding such amounts.

"c) No increase in liability. – The amendments made by this section [amending sections 1385 note, 1391, 1397, 1399, 1415 and 1461 of this title] shall not be construed to increase the liability incurred by any employer pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq. section 1381 et seq. of this title), as in effect immediately before the amendments made by subsection (b), [amending sections 1385 note, 1391, 1397, 1399, 1415 and 1461 of this title] as a result of the complete or partial withdrawal

of such employer from a multiemployer plan prior to September 26, 1980.

§ 1383. Complete withdrawal

(a) Determinative factors

For purposes of this part, a complete withdrawal from a multiemployer plan occurs when an employer –

(1) permanently ceases to have an obligation to contribute under the plan, or

(2) permanently ceases all covered operations under the plan.

(b) Building and construction industry

(1) Notwithstanding subsection (a) of this section, in the case of an employer that has an obligation to contribute under a plan for work performed in the building and construction industry, a complete withdrawal occurs only as described in paragraph (2), if –

(A) substantially all the employees with respect to whom the employer has an obligation to contribute under the plan perform work in the building and construction industry, and

(B) the plan –

(i) primarily covers employees in the building and construction industry, or

(ii) is amended to provide that this subsection applies to employers described in this paragraph.

(2) A withdrawal occurs under this paragraph if –

(A) an employer ceases to have an obligation to contribute under the plan, and

(B) the employer –

(i) continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required, or

(ii) resumes such work within 5 years after the date on which the obligation to contribute under the plan ceases, and does not renew the obligation at the time of the resumption.

In the matter of	)
CMSH COMPANY, INC., and CMSH FRAMING	)
vs.	)
CARPENTERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA	)
Withdrawal Liability Dispute	)

STATEMENT OF AGREED FACTS

The above-captioned parties hereby agree that the underlying withdrawal liability dispute will be submitted upon this Statement of Agreed Facts. The respective parties reserve the right to raise additional factual issues and introduce additional evidence pursuant to a further stipulation to be entered into prior to the hearing in the underlying arbitration.

The following facts are stipulated to and agreed upon by the parties hereto:

1. CMSH Company, Inc. is a California corporation incorporated under the laws of the State of California in conformance with the California Corporation's Code.

2. CMSH Company, Inc. at all times relevant hereto has maintained a corporate employer identification number, licensing bond, contractor's license, checking accounts, office address, phone, and bank accounts in its name.

3. At all relevant times herein, William Crouse has been President of CMSH Company, Inc. (CMSH).

4. At all relevant times herein, William Crouse was Vice President of CMSH Framing Company, Inc. (CMSH Framing).

5. At all relevant times herein, William Crouse has had a fifty percent (50%) ownership interest in CMSH and a twenty-seven and one-half percent (27.5%) ownership interest in CMSH Framing.

6. At all relevant times herein, Robert Hagood had a fifty percent (50%) ownership interest in CMSH and a twenty-seven and one-half percent (27.5%) ownership interest in CMSH Framing.

7. At all relevant times herein, Michael Stiles had a forty-five percent (45%) ownership interest in CMSH Framing.

8. In June 1974, William Crouse, on behalf of CMSH, signed a collective bargaining agreement with the Carpenters 46 Northern California Counties Conference Board (Carpenters). A copy of the applicable Carpenters Master Agreement is attached hereto and incorporated herein by reference as Exhibit "A".

9. The 1974-77 Carpenters Master Agreement was amended, modified and changed by a successor Carpenters Master Agreement in June 1977. Attached hereto and incorporated herein by reference as Exhibit "B" is a true and accurate copy of the 1977-80 Carpenters Master Agreement.

10. From 1974 to mid 1978, CMSH employed carpenters under the terms of the applicable Carpenters Master Agreement. After the expiration date of the 1974-77 Master Agreement, and during negotiations with

the Carpenters, CMSH continued to employ carpenters under the terms of the contract.

11. In mid 1978 CMSH ceased performing operations covered by the terms of the collective bargaining agreement and instead subcontracted all such work out to CMSH Framing.

12. CMSH Framing was incorporated on July 11, 1978.

13. Commencing in 1978, CMSH Framing obtained a contractor's license and employed carpenters under the terms of the 1977-80 Carpenters Master Agreement (Exhibit "B" hereto). CMSH Framing made fringe benefit contribution payments to the Carpenters Pension Trust Fund for Northern California (Carpenters Pension Fund).

14. On March 28, 1980, CMSH Company, Inc. and CMSH Framing advised the Carpenters 46 Northern California Counties Conference Board that they were terminating the current collective bargaining agreement on its expiration date of June 15, 1980.

15. In April 1980, CMSH and CMSH Framing notified the Carpenters that they wished to open the collective bargaining agreement and enter into negotiations with the Carpenters.

16. Subsequent to June 15, 1980, the termination date of the 1977-80 Carpenters Master Agreement, CMSH Framing continued to employ individual carpenters under the terms of the Carpenters Master Agreement and continued to pay fringe benefit contributions to the Carpenters Pension Fund for those hours of covered employed.

17. CMSH Framing was a corporation at all times relevant hereto incorporated under the laws of the State of California, with its own employer identification number separate and apart from CMSH, its own license, its own bond, its own bank accounts and its own payroll record.

18. Michael Stiles was responsible for the day to day management of CMSH Framing. William Crouse was responsible for the day to day management of CMSH Company, Inc. Michael Stiles had been the foreman for CMSH Company, Inc. and then became the responsible officer of CMSH Framing.

19. In 1981, CMSH Framing utilized the Carpenters Apprenticeship Training Program and employed indentured apprentices under the Carpenters program which is certified by the Division of Apprenticeship Standards, State of California.

20. A true and accurate copy of the Carpenters Apprenticeship Trust Fund appears in the booklet containing the various Carpenter Trust Agreements, which is attached hereto and incorporated herein by reference as Exhibit "C".

21. Anne Rhone, an employee of both CMSH and CMSH Framing, handled the employee benefit contribution report forms transmitted to the various Carpenter Trust Funds in 1981. Payments were made by Ms. Rhone with those transmittals. Although the reports were sent to CMSH Company, the checks paid were from CMSH Framing and the hours reported were attributable to CMSH Framing's carpenters. Attached hereto and incorporated herein by reference as Exhibit "E" are true and

accurate copies of the contribution report forms submitted by CMSH Framing for calendar years 1980, 1981, and 1982.

22. During the period of August 1978 through October of 1982, CMSH Framing performed work as a subcontractor for CMSH and performed subcontracting work for other employers unrelated to CMSH Framing or CMSH Company, Inc. as more fully stated in Exhibit "F" attached hereto. In fact, over 85% of CMSH Framing's work was done for contractors other than CMSH company, Inc.

23. CMSH Framing finally ceased contributions to the Carpenters Pension Fund in October of 1982 when an impasse in negotiations was reached with the Carpenters.

24. CMSH Framing was dissolved on September 30, 1986.

25. By way of notice dated January 14, 1988, the Carpenters Pension Fund notified CMSH and CMSH Framing of the withdrawal liability assessment totalling $229,170.00. Attached hereto and incorporated herein by reference as Exhibit "D" is a true and accurate copy of the withdrawal liability notice sent. The withdrawal liability assessment by the Carpenters Pension Fund treats CMSH and CMSH Framing as one employer.

26. No payments have been made by CMSH or CMSH Framing to the Carpenters Pension Fund pursuant to the withdrawal liability assessment.

27. CMSH Framing received funds from CMSH Corporation, Inc. The loans are represented by a note due

CMSH corporation, Inc. as reflected on the financial statements of CMSH Framing.

Dated: ___, 1989

LIPTON & LIPTON

By: _____
MARK H. LIPTON
Attorneys for CMSH & CMSH Framing

Dated: ___, 1989

VAN BOURG, WEINBERG, ROGER & ROSENFELD

By: _____
ROBERT M. HIRSH
Attorneys for Carpenters Pension Trust Fund